

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Theodore W. Smith, III,

Plaintiff,

v.

Case No. 1:17cv128

Correctional Officer Bingham,

Judge Michael R. Barrett

Defendant.

**ORDER**

This matter is before the Court on the Report and Recommendation filed by the Magistrate Judge on May 7, 2018 (Doc. 26).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). No objections to the Magistrate Judge's Report and Recommendation have been filed.

Accordingly, it is **ORDERED** that the Report and Recommendation (Doc. 26) of the Magistrate Judge is hereby **ADOPTED**. Defendant's Motion for Summary Judgment (Doc. 22) is **DENIED** as to a single count of excessive force and granted consistent with the recommendation by the Magistrate Judge. The Court will appoint counsel as well as issue an amended calendar as to final pretrial and trial dates.

**IT IS SO ORDERED.**

*s/Michael R. Barrett*  
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Michael R. Barrett  
United States District Judge